Alfredo bin Pakkal (Filipino Illegal Immigrant) v Deputy Minister of Home Affairs Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO 44–260 OF 2010
SU GEOK YIAM J
2 MARCH 2011

Criminal Procedure — Habeas corpus — Preventive detention — Detention order under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('Act') — Application by detainee for release on ground detention unlawful and invalid for breach of provisions of Federal Constitution and the Act — Whether there was procedural non-compliance with Act — Whether detainee deprived of right to counsel during hearing of representation by Advisory Board

The applicant filed a notice of motion and affidavit ('encl 3') in the High Court for a writ of habeas corpus for his release from a two-year detention order issued by the Deputy Minister of Home Affairs Malaysia ('Deputy Minister') pursuant to s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). He contended his detention was unlawful and invalid for breach of arts 5(1) and (3) and 151 of the Federal Constitution and for non-compliance by the respondents of ss 3, 5, 6 and 9 of the Act. Nine affidavits in reply were filed on behalf of the respondents including one by the Deputy Minister (encl 8). One of the two main grounds canvassed for the applicant was that the Deputy Minister had not applied his mind fully to all relevant matters when he issued the detention order. To support that argument it was pointed out that encl 8 mistakenly identified some other exhibit as the detention order and mistakenly described the exhibit of the detention order as the grounds for the detention order and statement of facts for the grounds for the order. It was submitted that these errors supported the applicant's contention in encl 3 that the Deputy Minister had not adequately considered the facts and grounds for his detention under s 6(1) of the Act and that he had signed the detention order in a mechanical manner without fully applying his mind in the issuing out of the order. The second ground canvassed was that the applicant had been deprived of his constitutional right to representation by counsel at the hearing of his representation by the Advisory Board and that this invalidated his detention.

Held, dismissing the application:

(1) The court was satisfied that there was no procedural non-compliance by the Deputy Minister of any requirement under the law that rendered the detention of the applicant unlawful or the detention order null and void (see para 49).

(2) Upon reading all the affidavits filed in their totality, the court viewed the error on the part of the Deputy Minister in referring to the wrong exhibit in his affidavit as minor in nature. It could have been a typographical or clerical mistake which did not prejudice the applicant because all the documents referred to were self-explanatory. In encl 3 the applicant had himself exhibited the detention order, the grounds for the order and the statement of facts for the grounds for the detention order all of which corresponded with exh ASY1 in encl 8 (see para 42).

(3) Since the court could not under ss 11C(1) and 11D(c) of the Act review the subjective satisfaction of the Deputy Minister under s 6(1) and as he had deposed at length in his affidavit that before making and issuing the detention order he had considered the two reports concerned; that he had applied his mind to the facts of the allegations against the applicant as contained in the two reports he had received under ss 3(3) and 5(4) of the Act and considering the decisions of the Federal Court on the point, the applicant's first ground of objection failed (see para 47).

(4) The court believed and accepted the statement of Azwiralbukhairi bin Ab Aziz, secretary to the Advisory Board, in his affidavit that it was the applicant himself who abandoned his right and initial wish to be represented by counsel of his choice during the Board's sitting on 27 April 2010 as he could not afford to retain counsel (see para 48)

(5) Nowhere in his supporting affidavit did the applicant mentioned the name of counsel whom or the legal firm which he had engaged to represent him. So the court was of the view that his assertion could not be true (see para 48).

[*Editorial note*: The applicant's appeal against the above decision to the Federal Court was dismissed by order dated 5 April 2011.]

[Bahasa Malaysia summary

Pemohon memfailkan notis pemula dan afidavit (lampiran 3) di Mahkamah Tinggi untuk writ habeas corpus bagi pelepasannya daripada perintah tahanan selama dua tahun yang dikeluarkan oleh Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia ('Timbalan Menteri') mengikut s 6(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta tersebut'). Dia berhujah penahanannya adalah menyalahi undang-undang dan tidak sah disebabkan percanggahan perkara-perkara 5(1) dan (3) dan 151 Perlembagaan Persekutuan dan ketakpatuhan ss 3, 5, 6 dan 9 Akta oleh responden. Sembilan afidavit balasan telah difailkan bagi pihak responden-responden termasuk satu oleh Timbalan Menteri (lampiran 8). Salah satu daripada dua alasan yang dibentangkan oleh pemohon adalah bahawa Timbalan Menteri tidak memberikan tumpuan sepenuhnya terhadap kesemua perkara yang relevan semasa dia mengeluarkan perintah tahanan tersebut. Untuk menyokong hujahan tersebut adalah ditegaskan bahawa lampiran 8 dengan salah telah

mengenalpasti ekshibit yang lain sebagai perintah tahanan dan dengan silap telah menggambarkan ekshibit perintah tahanan tersebut sebagai alasan untuk perintah tahanan dan pernyataan fakta untuk alasan bagi perintah tersebut. Adalah dihujahkan bahawa kesilapan tersebut menyokong hujahan pemohon di dalam lampiran 3 bahawa Timbalan Menteri tidak mempertimbangkan fakta-fakta dan alasan dengan secukupnya di bawah s 6(1) Akta dan bahawa dia telah menandatangani perintah tahanan secara mekanikal tanpa memberikan perhatian yang sepenuhnya dalam mengeluarkan perintah tersebut. Alasan kedua yang dibentangkan adalah bahawa pemohon telah dinafikan hak berpelembagaannya untuk representasi oleh peguam semasa perbicaraan representasinya oleh Lembaga Penasihat dan bahawa ini menjadikan penahanannya tidak sah.

Diputuskan, menolak permohonan:

(1) Mahkamah berpuas hati bahawa tidak terdapat ketakpatuhan prosedur oleh Timbalan Menteri bagi mana-mana keperluan di bawah undang-undang yang mana menyebabkan tahanan pemohon menyalahi undang-undang atau perintah tahanan batal dan tidak sah (lihat perenggan 49).

(2) Setelah membaca kesemua afidavit yang difailkan secara keseluruhan, mahkamah berpendapat kesilapan di pihak Timbalan Menteri dengan merujuk kepada ekshibit yang salah di dalam afidavitnya adalah bersifat kecil. Ia mungkin kesilapan menaip atau perkeranian yang mana tidak memprejudis pemohon oleh kerana kesemua dokumen-dokumen yang dirujuk adalah jelas dengan sendirinya. Di dalam lampiran 3 pemohon dengan sendiri telah mengekshibitkan perintah tahanan, alasan-alasan untuk perintah dan pernyataan fakta-fakta untuk alasan perintah tahanan yang mana kesemuanya berpadanan dengan eksh ASY1 di dalam lampiran 8 (lihat perenggan 42).

(3) Memandangkan mahkamah tidak boleh, di bawah ss 11C(1) dan 11D(c) Akta, menyemak kepuasan subjektif Timbalan Menteri di bawah s 6(1) dan dia telah memberikan penerangan menyeluruh di dalam afidavitnya bahawa sebelum membuat dan mengeluarkan perintah tahanan tersebut dia telah mempertimbangkan dua laporan berkaitan; bahawa dia telah memberikan tumpuan kepada fakta-fakta dakwaan terhadap pemohon sepertimana yang terkandung di dalam kedua-dua laporan yang diterima olehnya di bawah ss 3(3) dan 5(4) Akta dan mempertimbangkan keputusan-keputusan Mahkamah Persekutaan mengenai poin tersebut, alasan bantahan pertama pemohon telah gagal (lihat perenggan 47).

(4) Mahkamah percaya dan menerima pernyataan Azwiralbbukhairi bin Ab Aziz, setiausaha Lembaga Penasihat, di dalam afidavitnya bahawa pemohon sendiri yang telah mengabaikan haknya dan kehendak awal untuk diwakili oleh peguam pilihannya sendiri semasa persidangan

lembaga pada 27 April 2010 memandangkan dia tidak berkemampuan untuk mendapatkan peguam (lihat perenggan 48).

(5) Tidak ada di mana-mana di dalam afidavit sokongannya pemohon menyebut nama peguam atau firma guaman yang digunakan untuk mewakilinya. Justeru, makkamah berpendapat bahawa pengataannya adalah tidak benar (lihat perenggan 48).

Nota editorial: Rayuan pemohon terhadap keputusan di atas kepada Mahkamah Persekutuan telah ditolak oleh perintah bertarikh 5 April 2011.]

Notes

For cases on preventive detention, see 5(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2215–2238.

Cases referred to

L Rajanderan R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2010] 7 CLJ 653, FC (refd)

Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914, FC (refd)

Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2006] 1 MLJ 309; [2005] 4 CLJ 613, FC (refd)

SK Tangakaliswaran a/l Krishnan v Menteri Hal Ehwal Dalam Negeri [2010] 1 MLJ 149; [2009] 6 CLJ 705, FC (distd)

Legislation referred to

Criminal Procedure Code s 365(1)(b)

Dangerous Drugs Act 1952 s 2

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3, 3(2)(a), (b), (3), 5, 5(4), 6, 6(1), 9, 11C, 11C(1), 11D, 11D(c), 14

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 r 2

Federal Constitution arts 5(1), (3), 151, 151(1)(b)

Emergency (Public Order and Prevention of Crime) (Amendment) Act 1989 ss 7C, 7D

Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1)

Tina Ong (Sivananthan) for the applicant.

Zafran Zabri bin Mohd Zaini (Federal Counsel, Ministry of Home Affairs) for the respondents.

Su Geok Yiam J:

[1] The applicant was detained at the Rehabilitation Centre, Muar, Johor from 13 March 2010 for a period of two years under a detention order dated 12 March 2010 issued by Datuk Wira Abu Seman Yusof, the Deputy Minister of

Home Affairs, Malaysia ('the Deputy Minister'), pursuant to s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') upon being satisfied that the applicant has been or is associated with any activity relating to or involving the trafficking in dangerous drugs and it is necessary in the interest of public order that the applicant be detained.

THE APPLICANT'S APPLICATION

[2] On 24 November 2010, he filed a notice of motion, at encl (4) together with a certificate of urgency at encl (2) and a supporting affidavit affirmed by the applicant on 23 November 2010 at encl (3), pursuant to s 365(1)(b) under Chapter XXXVI of the Criminal Procedure Code for the issuance of a writ of habeas corpus against the respondents for him to be produced before the court and to be released forthwith. He contended that his detention under the detention order was unlawful and invalid as it was done in breach of arts 5(1) and (3) and 151 of the Federal Constitution and there was non-compliance by the respondents with the provisions of ss 3, 5, 6 and 9 of the Act.

[3] He has also made several allegations of fact against the respondents in his supporting affidavit.

THE RESPONDANT'S AFFIDAVITS

[4] The respondents have filed a total of nine affidavits to deny, dispute and rebut the grounds and allegations relied upon by the applicant.

[5] The nine affidavits were affirmed by the following persons:

(a) Datuk Wira Abu Seman Yusof, the Deputy Minister of Home Affairs, Malaysia, on 3 January 2011, encl (8);

(b) ACP Mohd Adnan bin Ismail, the Assistant Director of Detention at the Department of Criminal Investigation, Narcotics, at the Royal Malaysian Police Force Headquarters at Bukit Aman, Kuala Lumpur, on 3 January 2011, encl (9);

(c) Shaharaliza bt Ab Razak, the inquiry officer, on 4 January 2011, encl (10);

(d) Muhamad Aminudin bin Che Omar, the Assistant Secretary of the Ministry of Home Affairs, on 5 January 2011, encl (11);

(e) Insp Nicodemus ak Branking, the Senior Police Officer of the Criminal Investigation Division, Narcotics, at the Police District Headquarters, Kinabatangan, Sabah, on 14 January 2011, encl (14);

(f) Azwiralbukhairi bin Ab Aziz, the Secretary of the Advisory Board at the Prime Minister's Department, on 14 January 2011, encl (15);

(g) Hairol Hisham bin Mohd Harith, the Deputy Director of Prisons at the Rehabilitation Centre, Muar, Johor, on 14 January 2011, encl (16);

(h) DKpl Ong Choon Lai, a police officer at the Police Headquarters, Muar, Johor, on 14 January 2011, encl (17); and

(i) Ahmad Khadri bin Ramli, the Assistant Director of Prisons at the Rehabilitation Centre, Muar, Johor, on 14 January 2011, encl (18).

[6] The applicant did not file any affidavit in reply to the respondents' nine affidavits.

[7] The first hearing date was fixed on 11 February 2011. On that date both parties informed the court that they were ready to go on. Cik Tina Ong learned counsel for the applicant also informed the court that she had given a copy of the applicant's outline submissions to the court interpreter that same morning. The court directed her that in future, outline submissions must be put in at least one day before the date of hearing of the application to give me sufficient time to read it.

THE APPLICANT'S SUBMISSIONS

[8] Cik Tina Ong, learned counsel for the applicant, initially put forth three grounds in her outline submissions to challenge the applicant's detention thereby abandoning the rest of the grounds as contained in the applicant's supporting affidavit. However, she also subsequently informed the court that she was only proceeding with the first and third grounds thereby abandoning the second ground. The reason is because due to an over sight on her part she had included the second ground in her submissions when the issue had already been decided by the Federal Court in the case of *Mohd Faizal Haris v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2006] 1 MLJ 309; [2005] 4 CLJ 613.

[9] The first ground is as follows:

(1) the applicant's detention is unlawful because the Deputy Minister did not apply his mind when he issued the detention order as in para 6 of his affidavit he has referred to exh NB1 in the affidavit of Insp Nicodemus ak Branking, encl (14), as the detention order when that exhibit is clearly not the detention order resulting in a procedural non-compliance with the provisions of s 6(1) of the Act read together with art 151(1)(b) of the Federal Constitution.

[10] On the first ground Cik Tina Ong has submitted that the applicant's detention is unlawful because there are two conflicting affidavits filed by the respondents which make references to exh NB1 in the affidavit of Insp Nicodemus ak Branking. According to Insp Nicodemus ak Branking, exh NB1 is a copy of the notice to the applicant to inform him of his right to make a representation. But the Deputy Minister in his affidavit, encl (8), has referred to the same exhibit as the detention order which he had issued against the applicant. Cik Tina Ong further submitted that this error showed that the Deputy Minister actually did not know and/or did not have knowledge about the contents of the affidavit that he had deposed in his affidavit.

[11] In addition to that the credibility of the Deputy Minister is also doubtful because he has referred to exh ASY1 (which is actually the detention order issued by himself) as the grounds and statement of facts for the ground for the detention order. So how can the Deputy Minister say in the same affidavit that he was satisfied that the detention order ought to be issued against the applicant when he does not even know which document is the detention order and which documents are the grounds and statement of facts for the grounds for the detention order? This shows that what the applicant has alleged in para 18 of his supporting affidavit, encl (3), that the Deputy Minister did not adequately consider the facts and grounds for the detention of the applicant under s 6(1) of the Act and that the Deputy Minister signed the detention order in a mechanical manner without carefully applying his mind to the matters is true.

(2) the applicant's detention is invalid because the applicant was not represented by his counsel at the hearing of his representation by the Advisory Board contrary to art 5(3) of the Federal Constitution and r 2 of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987.

[12] On the third ground, Cik Tina Ong has submitted that the proceedings of the Advisory Board which purportedly heard the applicant's representation on 27 April 2010 are invalid because the advisory board did not accord to the applicant his constitutional right to be represented by a counsel of his choice. This is borne out in Form 1, exh AAA1 in the affidavit of Azwiralbukhairi bin Ab Aziz, the secretary to the Advisory Board, encl (15), in which it is stated that the applicant wished to engage a counsel to represent him during the hearing of his representation.

[13] Cik Tina Ong has submitted that, therefore, what Azwiralbukhairi bin Ab Aziz, the secretary to the Advisory Board, has deposed in paras 6 and 7 in his affidavit that on 27 April 2010 the applicant informed the Advisory Board that he could not afford to engage a counsel and would like to conduct his representation hearing by himself is false and that what the applicant has

alleged in his supporting affidavit that he was not accorded his constitutional right to engage a counsel to represent him is true. She also referred to para 5 of his affidavit in which he had affirmed that the first sitting of the Advisory Board on 24 March 2010 had to be postponed to 27 April 2010 because the applicant wished to engage a counsel to represent him. Therefore, there is a breach of art 151 of the Federal Constitution and r 2 of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 which has deprived the applicant of his right to make an effective representation before the Advisory Board.

ISSUES FOR THE DETERMINATION OF THE COURT

[14] From the first and third grounds arise two issues for the determination of the court. The two issues are as follows:

(a) whether there is procedural non-compliance with s 6(1) of the Act because the Deputy Minister did not fully apply his mind in issuing out the detention order against the applicant? and

(b) whether the applicant was deprived of his constitutional right to be represented by a counsel of his choice during the hearing of his representation by the Advisory Board on 27 April 2010?

THE RESPONDENT'S SUBMISSIONS

[15] Encik Zafran Zafri bin Mohd Zaini, learned federal counsel, has submitted that both issues have no merits. On the first issue, the Deputy Minister's error in referring to exh NB1 in the affidavit of Insp Nicodemus ak Branking as the detention order was just a minor error because the Deputy Minister in para 7 in his affidavit, encl (8), has also referred to exh ASY1. This exhibit contains all the three documents, ie the detention order, the grounds for the detention order and also the statement of facts for the grounds for the detention order.

[16] On the second issue, the applicant himself informed the Advisory Board on 27 April 2010 that he could not afford to engage a counsel and wished to conduct his own representation. The applicant was never denied his constitutional right to engage a counsel of his own choice.

[17] So there was clearly no breach of any procedural requirement in the law so as to render his representation hearing invalid and his detention under the detention order unlawful.

DECISION OF THE COURT

[18] After hearing both the parties the court dismissed the applicant's application ('the decision of the court').

[19] Being dissatisfied with the decision of the court the applicant has filed a notice of appeal on 14 February 2011 to the Federal Court.

[20] On 22 February 2011 I received a copy of the notice of appeal from the Senior Assistant Registrar of the Kuala Lumpur High Court.

REASONS FOR THE DECISION OF THE COURT

[21] The reasons for the decision of the court are as follows:

[22] Upon examining the provisions of art 151(1)(b) of the Federal Constitution and ss 3, 5, 6(1), 11C(1) and 11D(c) of the Act and the decided cases the court was of the view that both the issues had no merits.

[23] The power of the Minister to order detention of a person under the Act is provided in s 6(1) of the Act. The section provides as follows:

> 6 Power to order detention and restriction of persons —
>
> (1) Whenever the Minister, after considering —
>
> (a) the complete report of investigation submitted under subsection (3) of section 3; and
>
> (b) the report of the Inquiry Officer submitted under subsection (4) of section 5,
>
> is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years.

[24] Section 3(3) of the Act provides as follows:

> (3) The police officer making an investigation pertaining to a person arrested and detained under this section shall cause a copy of the complete report of the investigation to be submitted —
>
> (a) to an Inquiry Officer appointed under subsection (1) of section 5; and
>
> (b) to the Minister,
>
> within such period as may be prescribed by the Minister by regulations made under this Act.

[25] Section 5 of the Act provides as follows:

5 Inquiry Officer —

(1) There shall be appointed by the Minister *in writing* such number of Inquiry Officers as may be necessary for the purposes of this Act:

Provided that *no police officer nor any person who is not legally qualified* shall be appointed to be an Inquiry Officer. (Emphasis added.)

(2) Upon receiving the report under subsection (3) of section 3, the Inquiry officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.

(3) An Inquiry officer may, in his discretion, for the purpose of subsection (2) —

(a) require the attendance before him of a person detained under section 3;

(b) procure and receive all such evidence, whether oral or in writing and whether the same be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;

(c) summon and examine witnesses on oath or affirmation, and may for those purposes administer any oath or affirmation;

(d) require the production of any document or other thing in his opinion relevant to the case.

(4) An Inquiry Officer shall submit his report in writing to the Minister within such period as may be

(5) prescribed by the Minister by regulations made under this Act.

[26] The Act was amended by the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1989 ('Act A738') which came into force on 24 August 1989. Act A 738, inter alia, inserted two new sections ie ss 11C and 11D into the Act. The new sections provide as follows

11C Judicial review of act or decision of Yang di-Pertuan Agong and Minister —

(1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

(2) …

11D Interpretation of 'judicial review' —

In this Act, 'judicial review' includes proceedings instituted by way of:

(a) …

(b) …

(c) A writ habeas corpus; and

(d) …

[27] The power of the Minister to detain a person under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance') is provided in s 4(1) of the Ordinance. The section provides as follows:

4 Power to order detention —

(1) If the Minister is satisfied that with a with view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a 'detention order') directing that that person be detained for any period not exceeding two years.

[28] The Ordinance was similarly amended by the Emergency (Public Order and Prevention of Crime) (Amendment) Act 1989 ('Act A740') which also came into force on 24 August 1989. The new sections which were inserted into the Ordinance include ss 7C and 7D.

[29] The new sections provide as follows:

7C Judicial review of act or decision of Yang di-Pertuan Agong and Minister —

(1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Ordinance, save in regard to any question on compliance with any procedural requirement in this Ordinance governing such act or decision.

7D Interpretation of 'judicial review' —

In this Ordinance, 'judicial review includes proceedings instituted by way of:

(a) …

(b) …

(c) A writ of habeas corpus; and

[30] In *Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914, Abdul Hamid Mohamad FCJ who delivered the judgment of the Federal Court held that courts must give effect to the amendments in the law. His Lordship was referring to the new ss 7C and 7D which were inserted into the Ordinance by the Emergency (Public Order and Prevention of Crime) (Amendment) Act 1989. The Amendment Act came into force on 24 August 1989.

[31] At p 922 His Lordship said as follows:

> The provisions of ss 7C and 7D are clear. The effect of the amendments is that, in a habeas corpus application such as in this case, the detention order made by the Minister under s 4(1) of the Ordinance may only be challenged on ground of non-compliance with any procedural requirement, and nothing else.

[32] His Lordship, consequently, ruled as follows at pp 930g–i– 931a:

> That being the law, it is the duty of the courts to apply them. So, in a habeas corpus application where the detention order of the Minister made under s 4(1) of the Ordinance or, for that matter, the equivalent sections in ISA 1960 and DD(SPM) Act 1985, the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non compliance.

[33] This court is of the view that His Lordship's interpretation of the two new ss 7C and 7D of the Ordinance are also applicable to the new ss 11C and 11D of the Act because the wording used is the same in the corresponding provisions except for the word 'Ordinance' in ss 7C and 7D as opposed to the word 'Act' in ss 11C and 11D. This means that since the amendments to the Act ie ss 11C and 11D and to the Ordinance ie ss 7C and 7D came into force on 24 August 1989 the courts can no longer review the subjective satisfaction of the Minister, including the subjective satisfaction of the Deputy Minister when he is carrying out the duties of the Minister.

[34] This view of the court is fortified by the decision of the Federal Court in the case of *Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri Malaysia & Ors* [2006] 1 MLJ 309; [2005] 4 CLJ 613. In that case, the High Court dismissed the applicant's application for a writ of habeas corpus. The applicant appealed to the Federal Court against the decision of the High Court. The

Federal Court dismissed the appellant's appeal. Augustine Paul FCJ in delivering the judgment of the Federal Court observed as follows at p 318 (MLJ); pp 627h– 628 a–c (CLJ):

> in view of the subjective nature of the exercise of discretion by the Minister in ordering detention as enunciated in *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 139 the court is not to concern itself with the vagueness, sufficiency or relevancy of the grounds of detention. Thus even if the report of investigation was prepared as the result of an illegal arrest the weight to be attached to it is a matter exclusively within the purview of the Minister. The court will not be concerned with the use of the report of investigation by the Minister. The consideration of a statement made by an illegally detained person cannot therefore be prohibited. The result is that the legality of the detention of a person under s 3(2) is not a condition precedent to the making of a detention order against him under s 6(1).
>
> The corollary is that a detention order can be made against a person under s 6(1) even when his detention under s 3(2) was irregular. The general rule that a writ of habeas corpus must be directed against the current order of detention therefore applies where a detention under s 6(1) has been made subsequent to an arrest and detention under s 3(1) and (2). It follows that where a detention order has been made under s 6(1) the writ of habeas corpus must be directed only against that order even if the earlier arrest and detention are irregular.

[35] In the case of *L Rajanderan R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 7 CLJ 653, the appellant was detained under the Act pursuant to a detention order issued by the Deputy Minister under s 6(1) of the Act. He applied unsuccessfully to the High Court for the issue of a writ of habeas corpus to secure his immediate release. Hence, his appeal to the Federal Court. At the hearing of his appeal he argued that the detention order was fatally flawed and illegal as the respondents had not filed any affidavit to rebut his allegation that the designated police officers had not complied with the requirements of s 3(2)(a) and (b) of the Act when effecting his arrest and detention prior to the issuance of the detention order.

[36] The respondents admitted to the non-filing of the affidavits but relied on the authority, of the case of *Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri & Ors*, that failure did not vitiate the detention order thus made. The Federal Court dismissed his appeal and refused to depart from its decision in *Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri & Ors* Abdul Hamid Embong FCJ in delivering the judgment of the Federal Court said as follows at p 660 G–l (CLJ):

> A writ of habeas corpus must be directed only against the current detention order even if the earlier arrest of the detainee is irregular. The court is also not concerned with the vagnesess, sufficiency or relevancy of the grounds of detention which is the

sphere of the subjective exercise of the Minister's discretion under the various executive detention legislations unless mala fide on his part is shown, (see *Karam Singh v Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia* [1969] 1 LNS 65 see also *Minister of Home Affairs, Malaysia & Anor v Karpal Singh* [1988] 3 MLJ 29). Any questions on the legality or propriety of the arrest or detention of a detainee at the investigation stage is not a relevant consideration nor is it a pre-condition to the order of detention of the Minister.

[37] Further down the page at paras G–I the learned judge said as follows:

… Previous cases such as *Koh Yoke Koon v Minister for Home Affairs, Malaysia & Anor* [1988] 1 MLJ 45; [1987] 1 LNS 67, which held that a detention order made against a suspect who had been illegally detained by the police at the investigation stage is subject to judicial review are no longer good law since this is not a procedural non-compliance of a condition precedent to nullify the detention order, (see also the Federal Court case of *Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 2 MLJ 631; [2005] 3 CLJ 914).

[38] Reverting back to the instant case, although Cik Tina Ong has not cited the case of *SK Tangakaliswaran a/l Krishnan v Menteri Hal Ehwal Dalam Negeri* [2010] 1 MLJ 149; [2009] 6 CLJ 705 in support of her submission that where the respondents have filed conflicting affidavits and there is no corrective affidavit filed, a doubt arises so as to render the detention of the detenu unlawful, the court is mindful of the decision of the Federal Court in that case.

[39] However, this court is of the respectful view that the facts in the instant case can be distinguished from the facts in that case. In that case the conflicting affidavits relate specifically to the issue whether the Advisory Board had complied with art 151 of the Federal Constitution and s 6(1) of the Ordinance which required the Advisory Board to make its recommendations to the Yang Di-Pertuan Agong within three months from the date it received the notice of representation from the applicant.

[40] The Federal Court held, inter alia, that where a party upon whom the onus of proof lies adduces conflicting evidence, a court assessing that evidence is entitled to rule that the burden has not been discharged and further, in a matter as important as an individual's liberty, the detenu is entitled to rely on the version that is most favourable to him. In that case, Gopal Sri Ram FCJ in delivering the decision of the Federal Court said as follows in para [4] at p 153 (MLJ); p 709 (CLJ):

[4] There appears to be a sharp conflict in and between the affidavit evidence produced by the respondents in answer to the appellant's application for habeas corpus. The first respondent in para 15 of his affidavit dated 31 March 2009 categorically states that the Board had not as at the date of

his affidavit made its recommendations to the Yang di-Pertuan Agong. This however is contradicted by the secretary to the Board who in his affidavit of 20 April 2009 states that the Board's recommendations were made to His Majesty on 13 January 2009. It is significant that even after the secretary to the Board had filed his affidavit, no attempt was made to explain the discrepancy in the dates. How then is the issue to be resolved?

and in paras 5, 6 and 7 at pp 153–154 (MLJ); pp 710–711 (CLJ):

[5] In my considered judgment the point at stake falls to be resolved with reference to the principles governing the burden of proof in an application for habeas corpus. It is settled law that on an application for habeas corpus the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority. See, *Chng Suan Tze v The Minister of Home Affairs & Ors And Other Appeals* [1989] 1 MLJ 69; [1988] 1 LNS 162. In *Mohinuddin v District Magistrate, Beed* AIR 1987 SC 1977, the Supreme Court of India observed as follows in the context of art 22 of the Indian Constitution from which is drawn our art 151:

> It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This court on more occasions than one has dealt with the question and it is now well-settled that it is incumbent on the state to satisfy the court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the constitutional safeguards embodied in art 22(5).

[6] So too here. It is for the respondents to prove that the constitutional and statutory safeguards embodied in art 151 and s 6(1) were strictly complied with. The liberty of an individual should not be infringed upon even to the slightest extent without proof that the impugned infringement is in accordance with the Constitution and statute. When considering whether a restraint upon liberty is in accordance with law it is to the evidence furnished by the detaining authority that a court must turn in the usual way. And where that evidence is by way of affidavit the court is not spared the task of subjecting its contents to the same tests as in any other case, if not to stricter scrutiny since the case concerns the violation of a constitutionally guaranteed protection. One of the tests that a court applies to test allegations in affidavits is to see whether they are contradictory in nature. See, *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212; [1979] 1 LNS 18. Further, where a party upon whom the onus of proof lies adduces conflicting or contradictory evidence, a court assessing that evidence is in the usual way entitled to rule that the burden has not been discharged. And in a matter as important as individual liberty, where contradictory averments are made on oath, the detenu is entitled to rely on the version that is most favourable to him.

Put a little differently, where as in circumstances present here, more than one inference may be drawn from the evidence presented by the detaining authority, the inference most favourable to the detenu must be drawn. I must therefore respectfully reject the invitation of learned senior federal counsel to accept the secretary's evidence and reject that of the minister as inaccurate. Both affidavits were filed on behalf of the detaining authority and it is not, generally speaking, in accordance with the principles governing the evaluation of affidavit evidence that one deponent's version of the facts should be preferred to another when both are giving evidence for the same side.

[7] Applying the principles I have referred to earlier in this judgment, it is my considered view that the respondents have failed to show that the recommendations of the Advisory Board were made to His Majesty within the three months prescribed by art 151 and s 6(1).

[41] Nevertheless, in the instant case, upon reading the nine affidavits of the respondents together with the applicant's supporting affidavit in their totality, the court agreed with and accepted the submission of learned federal counsel that as far as the first issue is concerned the error on the part of the Minister in referring to the wrong exh ie NB1 in para 6 of the Deputy Minister's affidavit was only minor in nature. The court was also of the view that it must have been a typographical or a clerical mistake. It did not prejudice the applicant because all the documents referred to are self-explanatory and in the applicant's supporting affidavit, encl (3), the applicant himself has exh AP1 as the detention order and AP2 as the grounds and statement of facts for the grounds of the detention order. Both these two exhibits correspond to the one exh ASY1 in the Deputy Minister's affidavit.

[42] The Deputy Minister has categorically deposed that he applied his mind to the relevant reports containing all the facts relating to the allegations against the applicant and information and that he satisfied himself that it was necessary to detain the applicant for a period of two years.

[43] The Deputy Minister has deposed as follows in paras 6, 7, 8, 9, 10, 11 in his affidavit, encl (8):

6. Daripada laporan lengkap penyiasatan yang berkaitan dengan aktiviti pemohon yang telah saya terima daripada Inspektor Polis Nicodemus anak Branking iaitu Pegawai Penyiasat Polis di bawah Seksyen 3(3) Akta tersebut pada 22 Februari 2010 mengenai tangkapan dan penahanan pemohon dan juga laporan di bawah Seksyen 5(4) Akta tersebut oleh Shaharaliza Binti Ab Razak iaitu Pegawai Siasatan pada 10 Mac 2010, saya berpuas hati bahawa pemohon pernah ada atau sedang ada kaitan dengan aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya dan adalah perlu bagi ketenteraman awam supaya pemohon ditahan. Seterusnya saya telah membuat satu Perintah

Tahanan di bawah Seksyen 6(1) Akta tersebut bertarikh 12 Mac 2010 yang mengarahkan supaya pemohon ditahan bagi tempoh dua (2) tahun mulai 13 Mac 2010 seperti yang ditunjukkan kepada saya dan dilampirkan serta ditandakan sebagai ekshibit 'NB-1' dalam afidavit Insp. polis Nicodemus Anak Branking (selepas ini drujuk sebagai 'Perintah Tahanan tersebut') di Pusat Pemulihan Akhlah Muar, Johor. Saya tidak dapat menzahirkan kes fail berkenaan aktiviti pemohon kerana berpendapat dengan berbuat demikian bertentangan dengan kepentingan Negara menurut Seksyen 14 Akta tersebut dan Perkara 151(3) Perlembagaan Persekutuan. Oleh yang demikian, saya menuntut keistimewaan dan perlindungan di bawah peruntukan-peruntukan undang-undang tersebut.

7. Pada 12 Mac 2010, di atas arahan saya, pegawai saya bernama Muhamad Aminudin Bin Che Omar telah menyediakan Alasan-Alasan yang atasnya saya membuat perintah tahanan tersebut dan pengataan-pengataan fakta yang diatasnya perintah tahanan tersebut diasaskan. Muhamad Aminudin Bin Che Omar kemudiannya telah melaksanakan arahan saya tersebut. Beliau selanjutnya telah menyediakan 3 salinan perintah tahanan tersebut dan 3 salinan alasan-alasan dan pengataan-pengataan fakta yang diatasnya perintah tahanan tersebut diasaskan untuk semakan saya. Saya kemudiannya meneliti dokumen-dokumen tersebut dan saya berpuas hati bahawa ia menepati dengan kehendak saya dan kepuasan hati saya sebelum ini iaitu pemohon perlu ditahan selama 2 tahun kerana pemohon pernah ada kaitan atau sedang ada apa-apa dengan aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya dan adalah perlu bagi ketenteraman awam supaya pemohon ditahan. Ekoran dari itu, saya menurunkan tandatangan saya pada ketiga-tiga salinan perintah tahanan tersebut dan juga saya mengarahkan agar Muhamad Aminudin Bin Che Omar menandatangani ketiga-tiga alasan-alasan dan pengataan-pengataan fakta yang diatasnya perintah tahanan tersebut diasaskan pada masa yang sama iaitu pada 12 Mac 2010. Saya sesungguhnya percaya bahawa alasan-alasan dan pengataan-pengataan fakta tersebut telah diterangkan dan diserahkan kepada pemohonpada tarikh yang sama perintah tahanan tersebut diserahkan kepada beliau. Salinan alasan-alasan dan pengataan-pengataan fakta tersebut adalah seperti yang dilampirkan serta ditandakan sebagai eksibit 'ASY-1' dalam afidavit saya ini.

8. Merujuk kepada perenggan 17, 18 dan 21 dalam afidavit pemohon, saya menyatakan bahawa saya sungguhnya telah menimbangkan dengan penuh teliti laporan lengkap penyiasatan yang dikemukakan kepada saya oleh pihak polis dan juga pegawai siasatan dan saya berpuas hati bahawa pemohon pernah dan atau sedang ada kaitan dengan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya, seperti yang ditakrifkan di bawah Seksyen 2 Akta Dadah Berbahaya 1952 (Akta 234) iaitu mengedar dadah berbahaya jenis Syabu yang mengandungi dadah berbahaya jenis Methaphetamine seperti yang tersenarai dibawah Jadual Pertama, Bahagian III, Akta Dadah Berbahaya 1952 (Akta 234). Oleh itu, tindakan pemohon telah memudaratkan ketenteraman awam dan tindakan dibawah Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 perlu diambil ke atas pemohon. Selanjutnya saya membuat keputusan bagi mengeluarkan perintah tahanan di bawah Seksyen 6(1) Akta tersebut terhadap pemohon. Berdasarkan

laporan lengkap penyiasatan pihak polis dan juga pegawai penyiasat Kementerian Dalam Negeri, saya juga sesungguhnya telah berpuas hati bahawa terdapat bukti menunjukkan tentang penglibatan pemohon dengan aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya yang memudaratkan ketenteraman awam dan seterusnya juga saya telah berpuas hati bahawa adalah perlu bagi ketenteraman awam supaya pemohon ditahan. Oleh yang demikian, saya menyangkal dakwaan pemohon bahawa saya tidak mengambil kira fakta-fakta dan alasan-alasan dan hanya menandatangani perintah tahanan secara kebiasaan. Saya menegaskan laporan-laporan yang saya terima daripada Ins Polis Nicodemus Anak Branking dan Shaharaliza Binti Abd Razak telah pun diberi perhatian dan penelitian yang sempurna oleh saya. Sesungguhnya tidak ada sebab untuk meragui laporan-laporan ini.

9. Selanjutnya, berkenaan dengan penyataan pemohon di perenggan 18, 22 (g), (h), (m) dan (n) dalam afidavit pemohon, saya sesungguhnya mengulangi pernyataan saya di perenggan di 6 dan 8 di atas dan menyatakan bahawa alasan-alasan dan pengataan-pengataan fakta yang atasnya perintah tahanan tersebut diasaskan adalah merupakan perkara yang telah diberi tumpuan dan pertimbangan sepenuhnya oleh saya semasa saya membuat keputusan di bawah Seksyen 6(1) Akta tersebut. Saya sesungguhnya menafikan pernyataan pemohon dan sebaliknya dengan suci hati menyatakan bahawa salinan perintah tahanan yang asal yang telah dibuat di bawah seksyen 6 Akta tersebut dan ia adalah sah dan mengikut undang-undang. Oleh yang demikian, saya sesungguhnya menegaskan bahawa perintah tahanan tersebut adalah sah menurut undang-undang mengikut skop Akta tersebut.

10. Merujuk kepada perenggan 19 dan 22(i) dalam afidavit pemohon, selanjutnya saya ingin mengulangi pernyataan saya di perenggan 5 hingga 7 diatas, serta menyatakan bahawa pernyataan mengenai alasan-alasan yang atasnya perintah itu dibuat dan pengataan-pengataan fakta yang atasnya perintah itu diasaskan seperti yang dilampirkan serta ditandakan sebagai ekshibit 'ASY-1' dalam afidavit saya ini telah pun di sediakan oleh pegawai saya, Penolong Setiausaha Bahagian Keselamatan dan Ketenteraman Awam bernama Muhamad Aminudin Bin Che Omar, atas arahan saya sepenuhnya. Saya telah mengarahkan diri saya serta mengambil kira secukupnya kepada alasan-alasan pengataan-pengataan fakta sebelum menandatangani perintah tahanan tersebut dan tiada terdapat perlanggaran pada peruntukkan Akta tersebut. Seterusnya, saya menegaskan bahawa perintah tahanan tersebut serta pernyataan mengenai alasan-alasan yang atasnya perintah itu dibuat dan pengataan-pengataan fakta yang atasnya perintah itu diasaskan adalah sah di sisi undang-undang.

11. Seterusnya saya menegaskan bahawa saya sesungguhnya mengambil kira semua fakta-fakta tuduhan terhadap pemohon dan telah menimbangkan dengan penuh teliti laporan lengkap penyiasatan yang dikemukakan kepada saya oleh pihak polis dan juga pegawai siasatan terhadap pemohon dan bukannya rekaan pihak polis semata-mata.

[44] The relevant paragraphs in the Deputy Minister's affidavit as set out above show as follows:

(a) on 22 February 2010, the Deputy Minister received the complete report

of investigation concerning the arrest and detention of the applicant from police Insp Nicodemus ak Branking, the investigating officer pursuant to s 3(3) of the Act;

(b) on 10 March 2010, the Deputy Minister received the report of Shaharliza bt Ab Razak, the inquiry officer, pursuant to s 5(4) of the Act;

(c) the Deputy Minister considered the two reports mentioned above very carefully and the Deputy Minister was satisfied that the applicant has or is involved in activities relating to or has connection with the trafficking of dangerous drugs, as defined in s 2 of the Dangerous Drugs Act 1952 (Act 234), ie, the trafficking of syabu which contained methamphetamine, a type of dangerous drug listed in Part III of the First Schedule of the Dangerous Drugs Act 1952 (Act 234), and that the activities of the applicant had prejudiced the public order and it was necessary that action under the Act be taken against the applicant and that it was necessary for the public order that the applicant be detained;

(d) the Deputy Minister then decided to issue a detention order against the applicant under s 6(1) of the Act;

(e) on 12 March 2010, the Deputy Minister made a detention order pursuant to s 6(1) of the Act whereby the applicant was ordered to be detained in the Rehabilitation Centre in Muar, Johor for a period of two years commencing on 13 March 2010;

(f) the Deputy Minister was unable to disclose the case file relating to the activities of the applicant and has claimed privilege and protection pursuant to s 14 of the Act and art 151 of the Federal Constitution because he was of the view that it would be contrary to the national interest if he were to make the disclosure;

(g) on 12 March 2010, the Deputy Minister directed his officer, Muhamad Aminudin bin Che Omar, to prepare the grounds on which he had made the detention order and the statement of facts on which the detention order was anchored;

(h) in compliance with his direction as mentioned above, Muhamad Aminudin bin Che Omar prepared three copies of the detention order, three copies of the grounds and three copies of the statement of facts on which the detention order was anchored (the 'said documents') for the Deputy Minister's perusal;

(i) after having carefully perused the said documents and upon being satisfied that the said documents met with his requirements the Deputy Minister and upon being satisfied that it was necessary to detain the

applicant for two years because the applicant has or is involved in activities relating to or has connection with the trafficking of dangerous drugs, and that it is necessary for the public order that the applicant be detained, the Deputy Minister signed all the three copies of the detention order;

(j) at the same time, the Deputy Minister also directed Muhamad Aminudin bin Che Omar to sign the three copies of the grounds and the three copies of the statement of facts on which the detention order was anchored;

(k) the Deputy Minister verily believed that the grounds and the statement of facts concerned had been duly explained and served on the applicant;

(l) the Deputy Minister in para 6 of his affidavit deposed that a copy of the grounds and the statement of facts concerned are attached to his affidavit and marked as exh ASY1;

(m) based on the two reports which he received from police Insp Nicodemus ak Branking and inquiry officer, Shaharaliza bt Ab Razak the Deputy Minister was satisfied that there was sufficient proof of the involvement of the applicant in activities relating to or has connection with the trafficking of dangerous drugs which were prejudicial to the public order and that it was, therefore, necessary to detain the applicant;

(n) the Deputy Minister did not have any reason to doubt the truth of those two reports;

(o) the Deputy Minister had given his full attention and consideration to the grounds for the detention order and the statement of facts which formed the basis for the detention order.

(p) the original copy of the detention order which was made pursuant to s 6 of the Act is legally valid and is within the scope of the Act;

(q) the Deputy Minister in para 10 of his affidavit has referred to exh ASY1 in his affidavit as comprising the grounds on which the detention order was made and also the statement of facts which formed the basis for the detention order both of which were prepared by Muhammad Aminudin bin Che Omar, the Assistant Secretary of the Public Order and Security Division in accordance with his directions;

(r) before making the detention order the Deputy Minister has taken into consideration all the facts concerning the allegations against the applicant and he has carefully and comprehensively considered the complete investigation report which was forwarded to him by the police and also the inquiry officer; and

(s) the Deputy Minister denied that the facts and the reports had been fabricated by the police against the applicant.

[45] With respect, the court was of the view that the first ground did not constitute a non-compliance of 'any procedural requirement' in the Act within the meaning of those words in s 11C(1) of the Act. Section 6(1) of the Act expressly authorises the Minister to issue a detention order after he has satisfied himself that the applicant has been or is associated with any activity relating to or involving the trafficking in dangerous drugs and it is necessary in the interest of public order that the applicant be detained.

[46] Since the court cannot review the subjective satisfaction of the Deputy Minister and bearing in mind that the Deputy Minister has deposed at length in his affidavit that before making and issuing the detention order against the applicant he has considered the two reports concerned, that he has applied his mind to the facts of the allegations against the applicant involving the applicant's activities, as contained in the two complete reports which he has received from the police officer concerned under s 3(3) of the Act and the inquiry officer concerned under s 5(4) of the Act the applicant cannot rely on that ground in his application for the issue of a writ habeas corpus by virtue of the provisions of ss 11C(1) and 11D(c) of the Act and the decisions of the Federal Courts in the cases referred to above.

[47] As far as the second issue is concerned the court was of the view that it also has no merits because the court believed and accepted the statement of Azwiralbukhairi bin Ab Aziz, the Secretary to the Advisory Board, in his affidavit, encl (15), that it was the applicant himself who abandoned his right and his initial wish to be represented by a counsel of his own choice during the sitting of the Advisory Board on 27 April 2010 as he could not afford to retain a counsel to act for him. Nowhere in his supporting affidavit has the applicant mentioned the name of counsel whom or the legal firm which he had engaged to represent him. So the court was of the view that his assertion could not be true.

CONCLUSION

[48] Based on the reasons as set out above the court was satisfied that there was no procedural non-compliance of any requirement on the part of the Deputy Minister under the law to render the detention of the applicant unlawful or the detention order null and void. The court, accordingly,

dismissed the applicant's application for a writ of habeas corpus to be issued out against the respondents for his immediate release from his detention.

Application dismissed.

Reported by Ashok Kumar